IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1353 of 2001
With
CIVIL APPLICATION NO. 4596 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL JAYANTILAL PURSHOTTAMDAS
Versus
DIRECTOR OF AGRICULTURE MARKETING AND RURAL FINANCE

Appearance:
MR PK JANI for Petitioner
MR KG SHETH for Respondent No. 1
MR YV SHAH for Respondent No. 2
MR GAURANG H BHATT for Respondent No. 3
MR HARIN P RAVAL for Respondent No. 4

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision:20/06/2001

CAV JUDGEMENT

1. Patel Jayantilal Purshottamdas, has filed this

petition for a direction for quashing the Resolution of Unjha Nagarpalika dated 28th February 2001 at Annexure-D, by which the Nagarpalika nominated Respondent No. 4 Somabhai Vithaldas Patel as member of the Unjha Market Committee. The petitioner was elected as councillor of the Unjha Nagarpalika and was nominated as Member of the Market Committee by the Nagarpalika by Resolution dated 16-1-1999. It is stated that the term of the Market Committee is four years, and therefore, the petitioner is entitled to continue as a member of the Unjha Market Committee till expiry of the term of the Market Committee. The newly constituted Market Committee met in its first meeting on 16-1-1999, and therefore it is contended by the petitioner that he is entitled to continue as Member of the Unjha Market Committee till the expiry of four years from 16-1-1999, irrespective of the fact whether he continues as councillor of Unjha Nagarpalika or not. Thereafter, in the month of December 1999 new elections were held in Unjha Nagarpalika and the petitioner contested the election and was elected as councillor of Unjha Nagarpalika from Ward No. 8. It is contended that the petitioner has again been elected as a councillor of Unjha Nagarpalika after elections in December 1999, therefore, he is entitiled to continue as member of the Unjha Market Committee in pursuance of the nomination made by the earlier Nagarpalika in 1998. The Chief Officer of Unjha Nagarpalika convened a meeting of the newly elected members, and the meeting was held on 20-1-2001. In the meeting of 28-2-2001 of Unjha Nagarpalika the agenda of nominating a councillor in Unjha Market Committee was discussed and an election was held among the councillors for nomination of a councillor. In the election respondent No.4 was nominated by majority of the councillors as member of the Unjha Market committee. The petitioner having felt aggrieved by the Resolution of the Unjha Market Committee dated 28-2-2001 filed the present petition for quashing the same. The respondent No.4 who has been nominated by the present Unjha Nagarpalika filed reply contesting the contentions of the petitioner. It is stated that the petitioner was nominated as member of the Unjha Market Committee by the earlier Nagarpalika in year 1998 and thereafter the term of Unjha Nagarpaliak came to an end on 6-1-2001 and the Collector of Mehsana District appointed an Administrator in Unjha Nagarpalika and the Administrator took charge on 10-1-2000. New elections were held for Unjha Nagarpalika and the petitioner also contested in the new election and was elected as councillor. The first meeting of the newly constituted members was held on 20-1-2000, from which date the new term of Unjha Nagarpalika begun. It is contended by

respondent No.4 that after expiry of the term of earlier Unjha Nagarpaliak the petitioner cannot continue as member of the Unjha Market Committee as the term of earlier Nagarpalika expired on 6-1-2000. However from 10-1-2000 to 19-1-2000 Administrator conducted the business of the Unjha Nagarpalika and he did not recommend the name of the petitioner to be nominated as member of the Unjha Market Committee, neither the new Committee after assumption of power on 20-1-2000 recommend the name of the petitioner for continuing him as member of the Unjha Market Committee. The newly constituted Unjha Nagarpalika in its meeting dated 28-2-2000 recommended respondent no.4 as nominee of the Nagarpalika to be a member of Unjha Market Committee.

2. The short question that has arisen in the present case is whether the petitioner can continue as a member of the Unjha Market Committee, after he ceased to be a councillor of the Unjha Nagarpalika.

3. Mr. P.K. Jani, learned counsel appearing on behalf of the petitioner submits that the petitioner was nominated by the earlier Unjha Nagarpalika by resolution dated 15-1-1999 to be a member of the Unjha Market Committee, and accordingly he became a member of the Market committee, from 15-1-1999, the first date of meeting of the Market Committee. It is submitted by Mr. Jani that even though the term of the earlier Committee expired on 6-1-2000 the petitioner contested the election in Unjha Nagarpalika from Ward No. 8 and he was elected as councillor of Unjha Nagarpalika. It is accordingly contended by Mr. Jani that, since the petitioner has been reelected as a councillor, it is not necessary to recommend the name of the petitioner once again either by the Administrator or by the new Committee to become a member of the Unjha Market Committee. The petitioner is continuing as a councillor both under earlier body as well as the newly elected body, and so he will continue to be a member of the Unjha Market Committee by virtue of his post as a councillor in the Nagarpalika. It is also contended by Mr. Jani that, after the election , the first meeting of the newly elected members of the Unjha Nagarpalika was held on 20-1-2000 and in the first meeting the Unjha Nagarpalika did not recommend any other councillors to be a member of the Market Committee but allowed the petitioner to continue as member of the Market Committee, but on 28-2-2001 a meeting was held and in that meeting Unjha Market Committee nominated respondent No.4 as member of the Market Committee. Mr. Jani argued that since the new body allowed the petitioner to continue as a member of the Unjha Market

Committee for about one year they cannot now nominate a new councillor to be a member of the Unjha Market Committee. Learned counsel accordingly submitted that the resolution of the Unjha Nagarpalika dated 28-2-2001 is illegal and is required to be quashed.

4. Mr. Harin Rawal, learned counsel appearing on behalf of respondent no.4 submitted that the petitioner was nominated by the earlier Unjha Nagarpalika by a resolution dated 16-1-1999 and the term of the earlier Nagarpalika came to an end on 6-1-2000 and an Administrator was appointed on 10-1-2000. The newly elected councillors held their first meeting on 20-1-2000 and the new Committee after assumption of office did not recommend the name of the petitioner as a nominee of the Unjha Nagarpalika in the Unjha Market Committee. It is also submitted by Mr. Rawal that the Administrator was holding charge of Unjha Nagarpalika from 10-1-2000 to 19-1-2000 and during this period also the Administrator did not nominate the petitioner as a member of the Unjha Market Committee. It is accordingly submitted by Mr. Rawal that, continuance of the petitioner as a member of Unjha Market Committee after expiry of earlier term of Nagarpalika is unauthorised and illegal. Eventhough the petitioner was claiming that he is member of the Unjha Market Committee as a representative of Unjha Nagarpalika, in eye of law he cannot be said to have any legal right to continue as member of Unjha Market Committee. There was no nomination either by the Administrator or by the newly constituted Unjha Nagarpalika in favour of the petitioner.

5. The short question that has arisen in the present case for decision is, whether a nominated member representing a local body can continue as a member of the Market Committee even though he ceased to be a councillor of the local body, after expiry of the term of the said local body. It is an admitted fact that the petitioner was nominated by the earlier body to represent the Market Committee as a member thereof in his capacity as a councillor of that body. The term of the earlier body expired on 6-1-2000. Accordingly I am of the view that the term of a councillor as a member of the Market Committee will be co-terminous with the term of the Nagarpalika and not with the Market Committee. In this connection provisions of Section 14 (1) (i) can be referred to, which inter alia provides that, an elected or nominated member shall ceases to hold office as such member if he ceased to be a member of the electorate by which he was elected. In the instant case it is an admitted fact that the petitioner was elected as a

nominated member in the Unjha Market Committee as a councillor of the Unjha Nagarpalika. The term of the Nagarpalika expired on 6-1-2000 and therefore as per provisions of section 14 (1) (i) of the Gujarat Agricultural Produce Markets Act, 1963, the petitioner cannot continued as a member in the Unjha Market Committee as his term as councillor has expired on 6-1-2000. Mr. P.K. Jani draws my attention to provisions of proviso to Section 11 (1) (iv), wherein it has been provided that, "where under the law applicable to the local authority its councillors or members have vacated office and any person or administrator has been appointed to exercise the powers and perform the functions of the local authority, such person or, as the case may be, administrator shall nominate a member under this paragraph from amongst persons qualified to be councillors or members of the local authority." Mr. Jani accordingly argued that the Administrator was appointed to administer functions of the Unjha Municipality from 10-1-2000 to 19-1-2000 and it was his duty to nominate the petitioner as a member of the Market Committee, as by this time in the new election also the petitioner has been elected as councillor. Mr. Jani accordingly submitted that, even though the administrator has not nominated the petitioner as a member of the Market Committee in writing, but it shall be deemed that he continue to be a member of the Market Committee as his nomination has not been cancelled by the Administrator. Mr. Jani also argued that the newly elected Committee held their first meeting of newly elected councillors on 20-1-2000 and after assuming office the new Committee also did not raise any objection about nomination of the petitioner as a member of Unjha Market Committee for about one year. Therefore Mr. Jani submitted that both the Administrator as well as the new Committee has impliedly consented to the continuation of the petitioner as member of the Unjha Market Committee being a councillor of that Nagarpalika. Mr. Jani accordingly submitted that, after lapse of about one year the new Committee has no right to nominate any other person as a member of the Unjha Market Committee and the petitioner had a right to continue till the expiry of the term of the present Market Committee as a member thereof.

6. I cannot agree with the submissions of Mr. Jani because in view of clear provisions of section 14 (1)(i) of the Gujarat Agricultural Produce Markets Act, 1963 the petitioner has ceased to be a councillor on 6-1-2000 when his term as councillor came to an end. Thereafter the Administrator did not appoint him to represent the Nagarpalika as a member in the Market Committee. Further

the newly elected Committee after assumption of power did not nominate the petitioner as a member of the Unjah Market Committee and therefore the continuance of the petitioner as a member in the Market Committee cannot be said to be legal after 6-1-2000. There cannot be any implied or tacit consent in the matter of nomination of a councillor in the Market Committee. The newly elected Committee have now decided to nominate one councillor as a member in the Unjha Market Committee and therefore, I am of the view that, nothing can prevent them from nominating a new councillor as member of the Unjha Market Committee. It further appears that, in the meeting of 28-2-2001 the petitioner participated in the meeting for election of a councillor as a member of the Unjha Market Committee and his candidate was defeated and respondent No.4 was nominated by majority of the councillors to represent Unjha Market Committee. The new body after elections held a meeting to nominate a councillor as a member of the Market Committee, and therefore, nothing wrong has been done by the new Committee in nominating respondent No.4 as a member of the Market Committee. The term of a nominated member of a Nagarpalika must be coextensive with the term of the Nagarpalika and not with the term of the Market Committee where he was nominated by the Nagarpalika. Accordingly I do not find any merits in the petition and the same is accordingly dismissed. Rule discharged. Ad interim relief granted earlier shall stand vacated. However, I make no order as to costs.

6. In view of aforesaid findings, no order is passed in Civil Application No.4596 of 2001. The Civil Application is accordingly disposed of.

Dt: 20-06-2001 (P.K. Sarkar, J)

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